

which the other Enterprise had engaged continuously since prior to July 30, 2008, the Enterprise must submit a Notice to FHFA. In support of its Notice, the Enterprise shall submit information sufficient to allow the Director to make a determination on the Notice pursuant to section 1321 of the Safety and Soundness Act (12 U.S.C. 4541), as amended, including any information required by FHFA by regulation or otherwise. The Enterprise shall provide a thorough, meaningful, complete and specific description of the new activity such that the public will be able to provide fully informed comment on the new activity if FHFA determines the new activity to be a new product. Such information shall include that contained in the FHFA Notice Form and the Instructions for the FHFA Notice of New Activity Form (Notice Form Instructions) that appear in the appendix of this part. The Notice Form and Notice Form Instructions may be amended from time to time by written direction of the Director. Requests for confidential treatment for any portion of an Enterprise's submission must be made consistent with § 1253.5.

(b) FHFA will evaluate a Notice to establish whether the submission contains sufficient information for FHFA to make a determination whether the new activity is a new product subject to prior approval. Upon establishing that the Notice contains sufficient information, FHFA shall deem the submission complete and “received” for purposes of section 1321(e)(2)(B) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)(B)), and shall notify the Enterprise accordingly.

(c) No later than 15 business-days after the Notice is deemed completed and “received” for purposes of section 1321(e)(2)(B) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)(B)), the Director will make a written determination on the Notice, and shall notify the Enterprise accordingly. The Director may also approve the new activity subject to such terms, conditions, or limitations on the Enterprise's engagement in the new activity as the Director determines to be appropriate.

(d) If the Director fails to make a determination within the 15 business-day

period specified in paragraph (c) of this section, the Enterprise may commence the new activity. The Director's failure to make a determination within the 15-day period does not limit or restrict the Director's safety and soundness authority or the authority of the Director to review the new activity to determine whether the activity is consistent with the statutory mission of the Enterprise.

#### § 1253.4 New product approval.

(a) *Public notice.* If the Director determines that the new activity is a new product, FHFA shall publish a public notice soliciting comments on the proposed product for a 30 calendar-day period.

(1) The public notice will describe the new product and state the closing date of the public comment period. The public notice will provide instructions for submission of public comment.

(2) The Director will consider all public comments received by the closing date of the comment period.

(3) In computing the 30 calendar-day public comment period, FHFA excludes the day on which the public notice is published in the FEDERAL REGISTER, from which the period begins to run, and includes the last day of the period, regardless of whether it is a Saturday, Sunday, or legal holiday.

(b) *Director's determination.* (1) No later than 30 calendar-days after the end of the public comment period, the Director will provide the Enterprise with a written determination on whether it may proceed with the new product. The written determination will specify the grounds for the Director's determination.

(2) The Director will approve the new product if the Director determines that the new product complies with the applicable authorizing statute, is in the public interest, and is consistent with the safety and soundness of the Enterprise and the mortgage finance and financial system. The Enterprise may then offer the new product subject to any terms, conditions, or limitations as may be established by the Director.

(3) Among the factors that the Director may consider when determining whether a new product is in the public interest are—

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(i) The degree to which the new product might reasonably be expected to advance any of the purposes of the Enterprise under the applicable authorizing statute;

(ii) The degree to which the new product serves underserved markets as set forth in section 1335 of the Safety and Soundness Act (12 U.S.C. 4565);

(iii) The degree to which the new product is being supplied or could be supplied by non-government-sponsored-enterprise firms;

(iv) Other alternatives for providing the new product;

(v) The degree to which the new product promotes competition in the marketplace or, to the contrary, would result in less competition and greater concentration of economic activity or risk;

(vi) The degree to which Enterprise provision of the new product overcomes natural market barriers or inefficiencies;

(vii) The degree to which Enterprise provision of the new product might raise or mitigate systemic risks to the mortgage, mortgage finance or other financial markets;

(viii) The degree to which the new product furthers fair housing; and

(ix) Such other factors determined appropriate by the Director.

(4) The Director will disapprove the new product if the Director determines that approval is inconsistent with applicable law, regulation, or FHFA policy thereunder, or contrary to public interest or the safety and soundness of the Enterprise or the mortgage finance or financial system. If the Director disapproves the new product, the Enterprise may not offer the new product.

(5) The Director may establish terms, conditions, or limitations on the Enterprise's offering of the new product to ensure that the product offering is consistent with applicable statutory and regulatory standards, FHFA policies, public interest, or the safety and soundness of the Enterprise or the mortgage finance or financial system.

(6) If the Director fails to make a determination within the 30 calendar-day period that begins on the day after the end of the public comment period, the Enterprise may offer the new product. The Director's failure to make a deter-

mination within such 30-day period does not limit or restrict the Director's safety and soundness authority or the authority of the Director to review the new product to determine that the product is consistent with the statutory mission of the Enterprise.

(c) *Temporary approval.* (1) FHFA may approve a new product without first seeking public comments as described in § 1253.4(c) if—

(i) The Enterprise submits a specific request for Temporary Approval that describes the exigent circumstances that make the delay associated with the 30-day public comment period contrary to the public interest and the Director determines that exigent circumstances exist and that delay associated with first seeking public comment would be contrary to the public interest; or

(ii) Notwithstanding the absence of a request by the Enterprise for Temporary Approval, the Director determines on his or her own initiative that there are exigent circumstances that make the delay associated with first seeking public comment contrary to the public interest.

(2) The Director may impose terms, conditions, or limitations on the Temporary Approval to ensure that the new product offering is consistent with applicable statutory and regulatory standards, FHFA policies, public interest, and the safety and soundness of the Enterprise or the mortgage finance system.

(3) If the Director grants Temporary Approval, the Director will notify the Enterprise in writing of the Director's decision, and include the period for which it is effective and any terms, conditions or limitations. Upon granting of Temporary Approval, FHFA will also publish the request for public comment to begin the process for permanent approval.

(4) If the Director denies a request for Temporary Approval, the Director will notify the Enterprise in writing of the Director's decision, and will evaluate the new product in accordance with paragraphs (a) through (c) of this section.

(d) *Additional information.* The Director may request any information in addition to that supplied in the completed Notice if, as a result of public comment or otherwise in the course of considering the Notice, the Director believes that the information is necessary for his or her decision. The Director may disapprove a new product if he or she does not receive the information requested from the Enterprise in sufficient time to permit adequate evaluation of the information within the time periods set forth in paragraph (c) of this section.

**§ 1253.5 Confidential information.**

(a) *Information presumed public.* FHFA will treat all information an Enterprise submits in a Notice as public information, except as provided in paragraphs (b) through (d) of this section. FHFA will also treat information provided by a commenter, in response to a notice requesting comment on an Enterprise new product, as public information, except as provided in paragraphs (b) through (d) of this section.

(b) *Confidential treatment request.* An Enterprise or commenter may designate specific information as confidential and request that it not be made publicly available. For any information that an Enterprise or commenter seeks confidential treatment, the Enterprise or commenter is required to submit a complete copy of the Notice or comment, with a specific request for confidential treatment. Simultaneously, the Enterprise or commenter is required to submit a copy of the Notice or comment containing only those portions for which no request for confidential treatment is made, and from which those portions for which confidential treatment is requested have been redacted. The Enterprise or commenter must specify the bases for designated information not being made public as set forth in paragraph (c) of this section.

(c) *Required information.* The Enterprise or commenter is required to provide the following information in support of its request for confidential treatment of the designated information—

(1) Identification of the specific information for which confidential treat-

ment is sought, and the specific Notice for which the information is being submitted;

(2) Explanation of the bases for the proposed confidential treatment including, but not limited to, why the information is “commercial or financial information obtained from a person and privileged or confidential” as that phrase is used in Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), and § 1202.4(a)(4) of this chapter;

(3) Explanation of the relevance and necessity of the information to whether the Notice should be approved or denied;

(4) Explanation of how disclosure of the information would result in substantial harm to the competitive position of the Enterprise or commenter;

(5) Explanation of whether the information is available to the public and the extent of any previous disclosure to third parties;

(6) Justification of the time period during which the Enterprise or commenter asserts that the material should not be available for public disclosure; and

(7) Any other information that the Enterprise or commenter seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

(d) *FHFA determination.* FHFA will determine whether the designated information may be withheld from public disclosure and will notify the Enterprise or commenter of the determination. In the event that FHFA determines the information may not be withheld from public disclosure, the Enterprise or commenter may withdraw the information or consent to public disclosure. Requests for confidential treatment that do not comply with paragraphs (b) and (c) of this section will not be considered.

**§ 1253.6 Certifying and nullifying an approval.**

(a) An Enterprise shall certify, through an executive officer, as that term is defined by § 1770.3(g) of this title, that any filing or supporting material submitted to FHFA pursuant to regulations in this part contains no